

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

JOHN CLAY, #1266658

§

VS.

§

CIVIL ACTION NO. 6:20cv281

DIRECTOR, TDCJ-CID

§

**ORDER ADOPTING REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE**

Petitioner John Clay, a prisoner within the Texas Department of Criminal Justice (TDCJ) proceeding *pro se* and *in forma pauperis*, filed this federal petition for a writ of habeas corpus challenging a judgment of conviction. The petition was referred to United States Magistrate Judge, the Honorable John D. Love, for findings of fact, conclusions of law, and recommendations for the disposition of the petition.

On June 1, 2020, Judge Love issued a Report (Docket No. 5) recommending that Petitioner's federal habeas petition be dismissed—without prejudice—for Petitioner's failure to exhaust his required state remedies before filing his habeas petition with this Court. A copy of this Report was sent to Petitioner's address, and Petitioner has timely filed objections (Docket No. 9).

The Court reviews objected-to portions of the Magistrate Judge's Report and Recommendation de novo. *See* Fed. R. Civ. P. 72 and 28 U.S.C. § 636(b)(1) ("A judge of the court shall make a de novo determination of those portions of the report or specified proposed finding and recommendation to which objection is made."). The Court conducting a de novo review examines the entire record and makes an independent assessment under the law. *Douglass v. United Servs. Auto. Ass'n*, 79 F.3d 1415, 1430 (5th Cir. 1996) (en banc), *superseded on other grounds by statute*, 28 U.S.C. § 636(b)(1) (extending the time to file objections from ten to fourteen days).


Here, having reviewed Plaintiff's objections de novo, the Court concludes that the objections are without merit and that the findings and conclusions of the Magistrate Judge are correct. Petitioner states in his petition and objections that he filed state habeas applications in 2020, which are still pending and thereby demonstrate his failure to exhaust. Until these petitions are adjudicated by the Texas Court of Criminal Appeals, Petitioner cannot proceed in federal court. Accordingly, it is

ORDERED that Petitioner's objections are **OVERRULED** and that the Magistrate Judge's Report (Docket No. 5) is **ADOPTED** as the opinion of the Court. Furthermore, it is

ORDERED that Petitioner's federal habeas petition is **DISMISSED** without prejudice for the failure to exhaust. Petitioner is **DENIED** a certificate of appealability *sua sponte*. Finally, it is

ORDERED that any and all motions which may be pending in this civil action are hereby **DENIED** as moot.

So **ORDERED** and **SIGNED** this **6th** day of **July, 2020**.


JEREMY D. KERNODLE
UNITED STATES DISTRICT JUDGE